

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,  
NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

ITA No. 3763/DEL/2017 [A.Y. 2008-09]

Mohd. Raees  
S/o Mohd. Rashid  
R/o Azad Mansain Raje Babu Road  
Bulandshahar

Vs.

The Income-tax Officer  
Ward - 3(2),  
New Delhi

PAN : ASPPA 4079 A  
[Assessee]

[Respondent]

Date of Hearing : 29.11.2017  
Date of Pronouncement : 14.12.2017

Assessee by : Shri Ashwani Taneja, Adv  
Shri Arichit Relan, Adv

Revenue by : Shri Atiq Ahmed Sr. DR

**ORDER**

This appeal of the assessee arises from the order of the ld. CIT(A), Ghaziabad vide order dated 01.03.2017 for A.Y. 2008-09.

2. The assessee has raised the following grounds of appeal:

*“1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/143(3) and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/143(3), is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.5,68,334/- allegedly on the ground that assessee has deposited cash in his SB Account and that too by recording incorrect facts and findings and without observing the principles of natural justice.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 5,68,334/-, on account of purchase of immovable property by treating it as alleged undisclosed investments u/s 69 is bad in law and against the facts and circumstances of the case.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. Briefly stated, the facts giving rise to Ground Nos. 1 and 2 being legal grounds are on the basis of information received from the department through AIR regarding purchase of immovable property. The above assessee purchased an immovable property of Rs.35,00,000/- during financial year 2007-08 relevant to A.Y.2008-09.

Query letter dated 13.02.2012,13.11.2014, were issued, which remain unserved. Finally query letter dated 30.01.2015 was issued and well served upon the assessee, but the reply of the assessee has not received. After that, case was reopened u/s 147 with the prior approval of Ld. Addl. CIT, Range-3, Bulandshahr. Notice u/s 148 of the IT Act, 1961 was issued on' 19.02.2015 and was well served. In response to the notices u/s 148 the assessee has filed his return of income on 10.08.2015 declaring total income of Rs.70,000/- in the head of income from other sources. Thereafter, notices u/s 143(2) and 142(1) alongwith questionnaire dt. 13.08.2015 were issued fixing the date of compliance on 26.08.2015. In response to the notices Shri Pramod Manglik, C.A. Authorised representative of the assessee attended and filed written submission alongwith required information and documents from time to time, which are placed on record.

4. I have heard the rival submissions and perused the relevant material on record. At the outset, the ld. counsel for the assessee Shri Ashwani Taneja, Adv pointed out the reasons dated 16.2.2015 recorded by the Addl. CIT, which are reproduced hereinbelow:

*“In this case I have received information through AIR, which reveals that during F.Y.2007-08 relevant to the A.Y.2008-09, the above person Shri Mohd. Raez S/o Shri Mohd. Rashid, R/o Azad Mansen. Raje Babu Road. Dist Bulandshahr has purchased air immovable property amounting to Rs.35,00,000/-. However, it has been verified that he has not filed his return of income. Since the assessee has not filed his return of income, it is very clear that this transaction's not been revealed before the department and this investment is an undisclosed investment made by the assessee. Therefore, this income in the hands of the assessee has escaped assessment. Hence to assess this income in the hands of the assessee, the escaping income proceedings are required to be initiated.*

*Sd/-*

*Dated : 11.02.2015*

*ITO, Bulandshahr*

Whether the Addl. Commissioner satisfied for issue notice u/s 148, Recorded by the ITO/A.C.I.T. that it is fit case for the issue of a notice u/s 148.

Yes, this is a fit case for issue of Of notice u/s 148 of the Act.

*Dated : 16.07.2015*

*Sd/-*

*Addl. CIT, Range  
Bulandshahr”*

5. From the perusal of the reasons recorded, it is evident that the Additional Commissioner of Income tax, Range Bulandshahr has written only “Yes, this is fit case for issue of notice u/s 148 of the Act”. The reasons so recorded prima facie shows that the ACIT, while recording and the Addl. CIT, while giving the approval have not applied their

mind, which is bad in law in view of the decision of the Hon'ble Delhi High Court in the case of Pr. CIT Vs. N.C. Cables Ltd reported in [2017] 98 CCH 0018 [DEL] dated 11.01.2017 wherein the relevant notes are as under:

*“Reassessment—Issuance of Notice—Sanction for issue of Notice—Assessee had in its return for AY 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan—Original assessment was completed u/s 143(3)—However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh—After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs. 1,35,00,000—CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities—Tribunal allowed assessee's appeal on merits—Revenue appealed against appellate order on merits—Assessee's cross appeal was on correctness of reopening of assessment—Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148—Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form*

*opinion— Mere appending of expression 'approved' says nothing— It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up—At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner—In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer— Revenue's appeal dismissed.”*

6. The decision of the Hon'ble Supreme Court in the case of CIT Vs. S. Goyanka Lime & Chemicals Ltd also supports the present case of the assessee in hand, wherein the head notes read as under:

*“Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord **sanction for issuing notice under section 148**, reopening of assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed Held, yes in favour of assessee”*

In view of the above cited decisions and the submissions made by the rival representatives, I find that the Addl. CIT has given sanction in a mechanical way without application of mind and no contrary decision

has been brought to my knowledge by the ld. DR though the ld. DR has vehemently contended that the reasons so recorded tantamount to satisfaction and there is application of mind. Since the facts involved in the instant case are similar to the decisions cited hereinabove, therefore, following the same, I direct to quash the assessment so made by the Assessing Officer. Grounds raised by the assessee are allowed.

7. In the result, the appeal of the assessee in ITA No. 3763/DEL/2017 is allowed.

The order is pronounced in the open court on 14.12.2017.

Sd/-  
[B.P. JAIN]  
ACCOUNTANT MEMBER

Dated: 14<sup>th</sup> December, 2017

VL/

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi